

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 791 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA****Sd/-**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 to 5 NO**

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DILIP NORTHMAL KHANDELWAL - Applicant(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MR KJ KAKKAD for Applicant(s) : 1,
MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SANDEEP N BHATT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 08/12/2006****ORAL JUDGMENT :**

1. The petitioner has, in the present
petition preferred under Articles 226 and 227 of
the Constitution and section 482 of the Code of

Criminal Procedure, 1973, sought the relief of quashing Criminal Case No.2395 of 1996 which is filed by respondent No.2 herein for dishonour of cheque issued by the petitioner. Learned counsel Mr.K.J.Kakkad, appearing for the petitioner, vehemently argued that, even as the cheque in question was issued in Rajkot and the firm of the petitioner as well as the complainant were located in Rajkot, the complainant had given statutory notice to the petitioner at the address of his father in Ajmer and joined in the notice brother of the petitioner. He submitted that such giving of notice did not fulfill the requirements of section 138 of the Negotiable Instruments Act, 1881. Secondly, he submitted that the complainant suppressed the fact of earlier dishonour of the cheque and, on this ground, the complaint was required to be quashed.

2. Learned advocate Mr.Sandeep Bhatt, appearing for respondent No.2-original complainant, pointed out that both the issues raised by the petitioner were squarely covered by the judgments of the Supreme Court. As held by the Supreme Court in ***Rajneesh Aggarwal v. Amit J. Bhalla*** [AIR 2001 SC 518], the object of issuance of notice has to be borne in mind and notice cannot be construed in a narrow technical way

without examining the substance of the matter. In the facts of the present case, not only the notice was addressed to the address in Ajmer, but the complaint also showed the same address of the petitioner and he has admittedly appeared before the trial court. The mention also of the name of his brother in the notice was immaterial. Secondly, as held by the Supreme Court in ***V. Raja Kumari v. P.Subbarama Naidu [2005 CR.L.J. 1217]***, the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure. The only requirement of law is giving of notice and the burden is on the complainant to show that notice was not properly served and such plea could be considered during the trial. Similarly, as held by the Supreme Court in ***Prem Chand Vijay Kumar v. Yashpal Singh [(2005) 4 SCC 417]***, the payee is free to present the cheque repeatedly within its validity period and dishonour of cheque on each presentation gives a fresh right to present it again, but complaint has to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires.

3. In view of the above clear legal position, leaving it open for the petitioner to agitate the issue of proper service of notice, the petition is dismissed and Rule is discharged with no order as to costs.

4. Learned counsel for the petitioner sought extension of the interim relief which was operating for all these years. There being no justification for grant of such relief, the request is not granted.

Sd/-
(**D.H.Waghela, J.**)

(KMG Thilake)